

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.601/2001.

Tuesday, this the 30th day of September, 2003.

C O R A M

HON'BLE MR.T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

M.Gokulnath,
Senior Commercial Clerk,
Southern Railway, Ottappalam,
Residing at 2/50, "Vishnu Priya",
Vishnu Nagar,
Palghat : 678 733.

..Applicant

[By Advocate Mr. T.C.Govindaswamy]

Versus

1. Union of India represented by
The General Manager,
Southern Railway Headquarters Office,
Park Town P.O.,
Chennai-3
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. P.Vijayakumar,
Senior General Clerk (Sr. GLC),
Commercial Branch,
Southern Railway,
Erode Railway Station P.O.,
Erode.

..Respondents

[By Advocate Mr. P. Haridas, R-1 to R-3)

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant while working as Diesel Fitter (Electrical) in Grade II, was medically decategorised and granted alternative appointment as a Commercial Clerk vide Annexure A1 order dated 20.6.1995. He joined as a Temporary Relieving Clerk and on

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completion of in-service training, he was absorbed against the working post of Commercial Clerk vide order Annexure A2 dated 10.10.1995. It is contended that as per Chapter 13 of the Indian Railway Establishment Manual, Volume 1 (the Manual, for short), the applicant was entitled to be absorbed in an equivalent scale of Rs. 1200-2040/4000-6000. In any case, the applicant was entitled to get his seniority in the cadre of Commercial Clerk with effect from 22.12.1984 or atleast with effect from 4.2.1989. While issuing Annexure A/2, the applicant's seniority was not determined despite his representation. He was thereafter informed that his case would be considered at the time of publication of the seniority list and after absorption of the applicant, for the first time, a provisional seniority list of Commercial Clerk grade Rs. 975-1540/3200-4900 was published on 30.7.1999, in which the applicant stood at serial No. 32. The seniority was assigned to the applicant on the basis of his date of entry into the cadre of Commercial Clerks as 20.6.95 and not by taking into consideration the earlier service rendered by the applicant. The seniority list of Senior Commercial Clerk grade Rs. 4000-6000 was also published simultaneously. In the said list, the applicant noticed the name of one Shri Vijaya Kumar placed at serial No. 37 duly granting him seniority and protection of pay scale even though he was medically rendered unfit and joined the cadre only as on 6.5.1998. The applicant stated that the said Vijaya Kumar was much junior to the applicant in the erstwhile cadre of Diesel Fitter (Electrical). It is stated that in terms of Railway Board's letter RBE N 36/94 dated 29.9.1994 (Annexure A/3) read with the provisions para 1314 of the Manual, the applicant was entitled to reckon his seniority in the cadre of Commercial Clerks atleast with effect from 4.2.1989 and in terms of (c)(i) of the same para,

respondents were bound to consider applicant's placement in the scale of pay of Rs. 4000-6000 suo moto. The applicant submitted a representation (Annexure A/4) dated 15.8.1999. Nothing has been heard on the said representation. Aggrieved by the same, he filed O.A. No. 1345/2000 which was disposed of vide order Annexure A/5, directing the 3rd respondent to consider Annexure A/3 representation in that O.A. in the light of the rules and instructions on the subject. The respondents rejected the claim of the applicant vide Annexure A/6 dated 21.3.2001 which is impugned in the present O.A. Aggrieved by the said order, the applicant has filed this O.A. seeking the following reliefs:

- "(a) call for the records leading to the issue of Annexure A/6 and quash the same;
- (b) declare that the applicant is entitled to be assigned his seniority in the category of Commercial Clerks in scale Rs. 975-1540 in terms of para 1314(a) of the Indian Railway Establishment Manual and direct the respondents accordingly;
- (c) direct the respondents to review the applicant's case for absorption in scale Rs. 4000-6000 in terms of para 1314(c)(i) of IREM Vol.I, on par with and in preference to the 4th respondent and direct further that the applicant be granted the consequential benefits thereof, from the date from which, such benefits were given to the 4th respondent."

2. The respondents have filed a detailed reply statement contending that the applicant was unfit for the post he was holding and fit for a sedentary job and not medically decategorised. There are no rules or orders for the claim of the applicant and the provisions mentioned by the applicant are not applicable in his case. It is also stated the O.A. is hopelessly barred by limitation. The applicant was medically unfit for the post held by him and absorbed as temporary Commercial Clerk vide Annexure A/2 order in 1995 whereas he had earlier filed O.A.No. 1345/2000 by the end of 2000 and there was



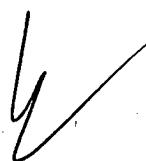
no justifiable explanation for the delay in filing the said O.A. The applicant has not challenged any seniority list in which he was assigned wrong seniority. No representation was also made within the time prescribed, alleging his placement in the seniority list. Hence, it will be presumed that the employee will have no grievance against the seniority position. The applicant was engaged as a substitute Khalasi on 21.10.78 and granted temporary status from 21.2.1979. He was promoted as Crane driver/Diesel/Electrical, Erode on 21.12.1984 and thereafter as Diesel/Electrical Fitter Grade II in scale Rs. 1200-1800 with effect from 4.2.1989. He has been found medically unfit for the post of Diesel/Electrical Fitter Grade II which he was holding and for non-technical sedentary job. Having found suitable for the post of Commerical Clerk in scale Rs.975-1540 by a nominated Committee, the applicant was absorbed as Commercial Clerk with effect from 26.6.1995. Accordingly, his seniority as Commercial Clerk was fixed correctly. The applicant's contention that he was medically decategorised is not correct. He was only medically unfit for his engaged post but fit for non-technical sedentary job. The seniority in the absorbed grade as per the extant provision is available only to the medically decategorised staff. Shri Vijaykumar mentioned by the applicant was medically decategorised and absorbed as Sr. Commercial Clerk and was given seniority as per the provisions of Para 1314 of IREM. The applicant had not preferred any representation on the seniority list within the time prescribed and the applicant was having no grievance at the time when Shri Vijayakumar was absorbed as Senior Commercial Clerk. The applicant has also not produced any document to show that he was medically decategorised. Repeated representations will not surmount the law of limitation. Therefore, the respondents prayed for dismissal of the O.A.



3. The applicant filed a rejoinder contending that the denial of applicant's case as not one of the medical decategorisation, was not correct. In fact, the applicant's case was similar to that of Shri Vijayakumar and the Para 1314 of the Manual is applicable in his case also. It is further contended that every Railway servant who is found unfit to hold the post in the category held by him, is decategorised from the category in which he is working for medical reasons. In Railway parlance, the process is commonly known as medical decategorisation. There is no other distinction as sought to be projected by the official respondents and no such distinction is ever shown by the respondents anywhere in Southern Railway or in the whole of the Indian Railways. The applicant specifically refers to another case of one Shri Gopinathan, who was an Electrical Fitter Grade II. He was declared unfit in Class B-1 and found suitable for the post of Office Clerk and accordingly absorbed in that post in the Mechanical Department. He was treated as a medically decategorised employee and granted all the benefits.

4. Shri T.C. Govindaswamy, learned counsel, appeared for the applicant and Shri P. Haridas, learned counsel for the official respondents 1 to 3. None has put appearance on behalf of the party respondent No.4.

5. We have heard the learned counsel for the parties and carefully gone through the pleadings and the material placed on record.

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6. The learned counsel for the applicant submitted that the Para 1314 of the Manual is applicable in the case of the applicant and the impugned order Annexure A/6 was passed on wrong footing and without application of mind. The learned counsel for the respondents on the hand submitted that the O.A. is barred by limitation. When the seniority list was published, the applicant did not prefer any objection within the prescribed period and it has now become final. The applicant is not entitled to make any grievance over the seniority list at this distant time.

7. We have given due consideration to the arguments advanced by the learned counsel for the parties. It is an admitted fact that the applicant was promoted as Crane Driver (Diesel/Electrical) on 21.12.1984 and thereafter, as Diesel/Electrical Fitter Grade II with effect from 4.2.1989 and while working on that post, he has been found medically unfit for the said post and fit for non-technical sedentary job. He was accordingly posted as Commercial Clerk in the scale of Rs. 975-1540 and as per the recommendation by a nominated Committee, he was absorbed as Commercial Clerk with effect from 26.6.95. It is also an admitted fact that one Shri Vijayakumar who was originally junior to him, was assigned seniority at an higher place in the provisional seniority published on 30.7.1999 and the applicant was assigned the seniority with effect from 20.6.95 taking into consideration the date of entry into the cadre of Commercial Clerk, ignoring the services rendered by the applicant earlier.

8. On going through the facts, we find that the seniority list for the first time, was published on 30.7.1999 against which the applicant made an objection by way of representation Annexure A/4 dated 15.8.1999. Thereafter, the applicant approached this

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Tribunal through O.A.No. 1345/2000 for getting the grievances redressed and this Tribunal in its order dated 22.12.2000, directed the third respondent to consider the representation Annexure A/3 to that O.A. Thereafter, vide order Annexure A/6 dated 21.3.2001, the applicant's claim has been rejected. The said order is impugned in the present O.A. Considering the above facts, we are of the view that there was no delay in challenging the seniority list by the applicant as the seniority was first time published on 30.7.1999 and immediately on 15.8.99, the applicant has come into action. Moreover, the claim of the applicant is for refixation of his seniority and consequential benefits of fixation of pay. In the decision reported in M.R. Gupta vs. Union of India, 1995 (2) SCC (L&S) 337, Hon'ble Supreme Court has held that the fixation of pay as a benefit consequential to fixation of seniority is a recurring cause of action. Therefore, the question of limitation is not attracted in the present case. The grievance of the applicant is for fixing his correct seniority considering the past services rendered by him prior to absorption in the medically declassified post. In a celebrated decision reported in 2003 (2) SLJ page 220, Bimlesh Tanwar vs. State of Haryana, Hon'ble Supreme Court has declared that the seniority is a civil right. It is an admitted fact that the applicant took charge of the present post when he was found medically unfit for the post he was originally holding or on medical declassification. On going through the Manual and the Rules, we find no provision making a distinction between medical declassification and medical unfitness. Therefore, the contention of the respondents that the seniority in the absorbed grade as per the extant provisions is available only to the medically declassified staff, like the case of Vijayakumar, cannot be accepted. The distinction that is



being sought by the respondents contending that the applicant was medically unfit for his engaged post but fit for sedentary job and the seniority cannot be granted to him, will not stand to reason. In the absence of any specific rule for fixation of seniority for medically unfit employees, we are of the view that the Para 1314 of the Manual as available to the medically decategorised employees, should be applicable to the employees, like the applicant, who have been found medically unfit. We are making this observation on the basis that the past service rendered by an employee in that establishment cannot be ignored unless there is a specific rule on the subject. It is also not the case of the respondents that the applicant has been inducted as a fresh recruit or not even a technical resignation from the earlier post has been obtained. Therefore, the contention of the respondents that the seniority could only be counted from the date of entry into the absorbed post, i.e. 20.6.1995, cannot be justified. The Para 1314 of the Manual says about the seniority of the medically decategorised staff absorbed in the alternative posts, whether in the same or other cadres, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade irrespective of rate of pay fixed in grade of absorption. The length of service has been considered as one of the criterion for determining the seniority. On the mere fact that the applicant has been characterised as medically unfit, his past service cannot be ignored for the purpose of seniority. We are of the view that he should have been granted seniority atleast in the cadre of Commercial Clerk with effect from 4.2.1989, while he was working Diesel/Electrical Fitter and found medically unfit for the said post.



9. Considering the above aspect, we are of the view that the benefit of Para 1314 of the Manual stating that the seniority of medically declassified staff in alternative posts, whether in the same or other cadres, should be allowed seniority in the absorbed grade with reference to the length of service rendered in the equivalent or corresponding grade irrespective of rate of pay fixed in the absorbed grade. This is supported by the decisions of Hon'ble Supreme Court reported in 1994 SCC (L&S) 882 = 1994 (2) SLJ SC 133, Narendra Kumar Chandla vs. State of Haryana & Ors. in which Hon'ble Supreme Court held that Article 21 protects the right to livelihood and that the employer must make every endeavour to adjust an employee afflicted by an unfortunate disease in a post in which an employee would be suitable to discharge his duties. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, also holds this proposition. If such is the position, all consequential benefits flowing out of such benefits, including the seniority, should also automatically follow.

10. In the conspectus of the facts and circumstances, we allow this O.A. with a declaration that the applicant is entitled to be assigned seniority from 4.2.1989 in the category of Commercial Clerk, if he had actually worked as Diesel/Electrical Grade II till he was granted alternative employment as Commercial Clerk on 10.10.1995. This factual position may be verified and if it is so, notional seniority for such period may be granted to the applicant and his correct seniority may be fixed in terms of the observations made above. Consequential order shall be issued with a copy to the applicant within a period of three months from



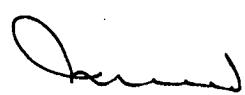
the date of receipt of a copy of this order. We make it clear that the applicant will not be entitled to any monetary benefits flowing out of this order.

11. There will be no order as to costs.

(Dated, 30th Sept. 2003)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

cvr.